

THE HONORABLE RONALD B. LEIGHTON

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

JULIANNE PANAGACOS, MALLORY)	NO. 3:10-cv-5018 RBL
HAGEL, STEPHANIE SNYDER,)	
EMILY COX, KIM CHAPLIN, MOLLY)	PLAINTIFFS' RESPONSE TO USA
PORTER, FABIOLA ROMERO,)	DEFENDANTS' SECOND DISMISSAL
ANDREA ROBBINS, JULIA GARFIELD))	(1st ON DEFENDANTS TOWERY AND
ERAN RHODES, ELI EVANS, CHRIS)	RUDD) (AND PLAINTIFFS' MOTION FOR
GRANDE, DAVI RIOS,)	RECONSIDERATION OF THE ORDER TO
)	SUBSTITUTE THE USA FOR
Plaintiffs,)	DEFENDANTS TOWERY AND RUDD,
)	BASED ON NEW EVIDENCE)
)	
v.)	
)	
JOHN J. TOWERY; THOMAS R. RUDD))	
CLINT COLVIN; CITY OF OLYMPIA)	
TOR BJORNSTAD, et al.,)	
)	
Defendants.)	
)	

JULIANNE PANAGACOS, MALLORY HAGEL, STEPHANIE SNYDER, EMILY COX,
Panagacos v. Towery, et al-Plaintiffs' response to Federal Defendants' 2nd dismissal motion, and D
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KIM CHAPLIN, , ANDREA ROBBINS, JULIA GARFIELD, ERAN RHODES, ELI EVANS, CHRIS GRANDE, DAVI RIOS, BRENDAN DUNN, JEFFREY BERRYHILL, and GLEN CRESPO the Plaintiffs herein, by and through their attorney, hereby respond as follows to the Federal Defendants' Motion to dismiss as to Towery and Rudd based on the applicable claims statute:

Plaintiffs Brendan Dunn, Glen Crespo, and Jeffrey Berryhill have all filed Federal Claims under the Federal Tort Claims Act. In addition, Kate Richmond, Philip Chinn, and others are in the process of filing such claims and will either file a new action or seek to join this one at the appropriate time. Brendan Dunn's claim has been formally rejected; the others have thus far been ignored. Plaintiffs Brendan Dunn, Glen Crespo, and Jeffrey Berryhill's claims have all been filed more than six months ago making them eligible to sue the Federal Defendants and rendering the US's argument moot as to all three Federal Defendants. If the six month claims statute bar were interpreted instead, as the Federal Defendants seek to have it interpreted, that no one could sue a Federal employee or the government until the Federal Government or agency formally rejected the claim, they would have no incentive to so reject and the harmed parties could never sue. This interpretation would have grave public policy implications and is wholly unacceptable.

In the event that their claims against the Federal Defendants are dismissed, these Plaintiffs, the only ones seeking damages from the Federal Government in this matter, they will refile at the appropriate time as part of a new action with the additional

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claimants/Plaintiffs

In addition, Plaintiffs' counsel has, in the past week obtained a great deal of new material evidence that is relevant to this action and this motion, including memoranda from the Pierce County Sheriff's Office and a contract between Defendant Towery and the Pierce County Sheriff's Office that verify that, in addition to spying on Plaintiffs and others for the Army, that Towery also did so officially, with the knowledge and approval of Defendant Rudd, for the Pierce County Sheriff's Office, thus rendering the substitution of the USA for Defendants Rudd and Towery improper, at least in part, and rendering the motion herein responded to as to Defendants Rudd and Towery inapplicable to the extent Towery was working for Pierce County with the agreement and apparent facilitation of Rudd, since there is no FTCA requirement for suing them in their individual capacity for work they did for Pierce County, which of course is not a Federal Agency.

Those documents are attached to Plaintiffs' Declaration of Hildes in support of this response.

Therefore, for all of the above reasons Defendants motion to dismiss the Federal defendants should be denied and Plaintiffs' also, accordingly move for reconsideration on the order granting the US government's motion to substitute into this action in Place of Defendants Towery and Rudd..

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Respectfully Submitted: February 1, 2011

/S/

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PROOF OF SERVICE

Lawrence A. Hildes certifies as follows:

I am over the age of 18 years, and not a party to this action. I am a citizen of the United States.

My business address is P.O. Box 5405, Bellingham, WA 98227

On February 1, 2011, I served the following documents(s) described as follows

PLAINTIFFS' RESPONSE TO FEDERAL DEFENDANTS 1ST DISMISSAL MOTION
on the following persons(s) in this action at the following addresses:

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Attorneys for Defendants

[X] By electronically serving, by filing an electronic copy with the court in such a way that
notice will be sent to counsel for Defendant

[X] (FEDERAL) I declare under penalty of perjury that I am a member of the BAR of this court,
and that the above information is true and correct.

Executed February 1, 2011, at Bellingham, Washington.

_____/S/
Lawrence A. Hildes

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